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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-ninth session

SUMMARY RECORD OF THE 1465th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 30 July 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.10 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the fifty-ninth session of the Committee on the Elimination of Racial Discrimination.

APPROVAL BY THE COMMITTEE OF THE EXPERTS APPOINTED BY STATE PARTIES TO FILL THE TWO VACANCIES RESULTING FROM THE RESIGNATION OF TWO MEMBERS OF THE COMMITTEE (item 1 of the provisional agenda) (CERD/C/410 and CERD/C/59/Misc.4)

2. The CHAIRMAN announced that, as the Swedish Government had failed to propose a Swedish national to fill the vacancy created by the resignation of Mr. Peter Nobel, the Committee would comprise only 17 members during the current session. In accordance with rule 13 of the Committee's rules of procedure, Germany had appointed Ms. Gabriele Britz to take over from Mr. Brun-Otto Bryde. He recalled that under rule 58 of the Committee's rules of procedure, elections were held by secret ballot, unless the Committee decided otherwise.

3. Mr. RESHETOV proposed that Ms. Britz's appointment be approved without a secret ballot.

4. It was so decided.

5. In accordance with rule 14 of the rules of procedure, Ms. BRITZ, newly elected member of the Committee, made the following solemn declaration:

> "I solemnly declare that I will perform my duties as member of the Committee on the Elimination of Racial Discrimination honourably, faithfully, impartially and conscientiously."

6. Mr. ABOUL-NASR expressed his disappointment that Sweden had been unable to appoint an expert to replace Mr. Nobel. The Committee needed a full complement of members in order to ensure that it always had a quorum.

7. The CHAIRMAN endorsed those comments on behalf of the Committee as a whole.

ADOPTION OF THE AGENDA (item 2 of the provisional agenda) (CERD/C/410)

8. The CHAIRMAN said he took it that the Committee wished to adopt the provisional agenda contained in document CERD/C/410, on the understanding that consideration of the items would be readjusted in the proposed programme of work on the basis of agreed changes.

9. It was so decided.

10. The CHAIRMAN said he took it that the Committee accordingly wished to adopt the proposed programme of work contained in document CERD/C/59/Misc.3/Rev.3.

11. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3)

12. The CHAIRMAN, welcoming Mr. Gaham, Chief of the Support Services Branch, Office of the High Commissioner for Human Rights, asked whether it would be possible for Mr. Singh, Executive Coordinator for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to attend the Committee meeting at which the Conference would be discussed.

13. Mr. GAHAM (Chief, Support Services Branch) said that steps would be taken to ensure that Mr. Singh, or another person able to answer the Committee's questions, would attend the appropriate Committee meeting.

14. The CHAIRMAN said that the Committee would have to devote some time during the current session to providing the Committee's six-person delegation to the World Conference against Racism with guidance as to its role at the Conference, to considering the logistics involved, and to discussing the manner in which the Committee would cover the Preparatory Conference for the World Conference. He suggested that Ms. January-Bardill, the coordinator of the contact group, be instructed to attend some of its meetings.

15. Reporting on some recent developments of interest to the Committee, he announced that Iraq had ratified the Convention on the Elimination of all Forms of Racial Discrimination in pursuance of article 18 thereof and the Government of the Federal Republic of Yugoslavia had made the declaration provided for in article 14, paragraph 1, of the Convention. Document CERD/C/60/Rev.4 contained an updated account of the status of reservations to the Convention.

16. Japan had availed itself of its right under article 9, paragraph 2, of the Convention to submit comments on the Committee's concluding observations on its country's report (CERD/C/304/Add.114) by forwarding a detailed 18-page note verbale (CERD/C/59/Misc.8) in response to the Committee's conclusions and recommendations. He wished to know whether the Committee members thought it feasible to include such a lengthy document in its annual report.

17. The Commission on Human Rights had adopted resolution 2001/5 on racism, racial discrimination, xenophobia and related intolerance, resolution 2001/36 on strengthening popular participation, equity, social justice and non-discrimination as essential foundations of democracy and resolution 2001/43 on the incompatibility between democracy and racism.

18. A further issue calling for very serious deliberation by the Committee was the report by Anne Bayefsky entitled "The UN Human Rights Treaty System: Universality at the Crossroads", which had been highly critical of the Committee's work. According to a press release issued and widely circulated by the Australian Government, the report had been prepared

with the collaboration of the Office of the United Nations High Commissioner for Human Rights. His initial reaction was to question Professor Bayefsky's depth of knowledge about the subject and to ask the secretariat for confirmation that the report really had been written with its assistance.

19. Mr. ABOUL-NASR said that the Committee was duty bound to publish the comments of the Japanese Government on the Committee's concluding observations in its annual report. One way out of the dilemma, which would also reduce translation costs, might be to request the Permanent Mission of Japan to summarize the replies in a document of restricted length.

20. Turning to the Bayefsky report, he pointed out that the Australian Government had displayed an aversion to the Committee for many years, so the press release had come as no surprise. He was, however, upset by the statement that the report had been prepared with the collaboration of the Office of the High Commissioner and by the fact that the latter had not so far denied it. The Committee should not react to a book which was full of untrue accusations and insults. On the other hand, he expected a press release from the Office of the High Commissioner disclaiming any part in the preparation of the book. If no such denial was forthcoming, he wished to know why the Office had assisted with the writing of such a censorious document.

21. The CHAIRMAN enclosed the proposal to request a summary from Japan. Referring to the Bayefsky report, he said that his initial reaction had likewise been in favour of ignoring the document. He had then discovered that the report had been distributed to all the Member States by Ms. Bayefsky herself and that the exercise had been financed by the Ford Foundation. The High Commissioner had informed him that while her Office had encouraged the author to make her study and had collaborated with her, Ms. Bayefsky had reached her own personal conclusions. He was proud to represent the Committee and challenged Ms. Bayefsky's allegations of political bias. At the same time, he was worried about States parties' reactions and by rumours that Governments were studying ways of implementing the report's recommendations. For that reason he did not think it advisable to play down the findings of the report and therefore proposed that the Committee should exchange views on the best methods of defending the Committee's reputation.

22. Mr. RESHETOV, referring to the reply by the Permanent Mission of Japan to the Committee's concluding observations, said that to accept a reply by a State party that was longer than the Committee's own concluding observations was to open a Pandora's box and would mean that, in the Committee's report to the General Assembly, State party responses might occupy more space than the concluding observations themselves. Ideally, there should be something in the Convention's provisions to prevent such situations but, as things stood, it seemed up to the Committee to exercise judgement and diplomacy.

23. The report prepared by Professor Bayefsky had been based on country monographs, for which country experts had been contacted by the professor; in the case of the Russian Federation, he himself had been one of those approached. He had answered questions intended to shed light on compliance by States parties with the various international human rights instruments and to provide information on specific issues; had he had any inkling, however, that the information would be put to the use reflected in the report he would not have

collaborated. He emphasized that he had been asked, as an independent expert, to provide information but not to offer comment or draw conclusions. Replying to a question by the CHAIRMAN, he said he did not know whether any prior approach had been made to the national authorities, either through the Permanent Mission or direct to government sources. He and another independent expert from the Russian Federation had indeed mentioned a number of difficulties noted in complying with the Convention's provisions but, far from criticizing the Committee, had stressed how the latter strove at all times to fulfil its task in the international human rights field. He added that he had inferred, from the circumstances, that the professor's approach had been something arranged jointly with the Office of the High Commissioner for Human Rights. He agreed that it would be wrong for the Committee to remain silent on the matter, and felt that the Office should be asked for an explanation.

24. Mr. BRUNI (Secretary of the Committee) said that the Secretariat treated the study in question, just as it did any similar work, as a possible source of information and assistance for enhancing the effectiveness of international human rights treaty mechanisms. To that end, the Office of the High Commissioner encouraged such contributions but took no responsibility for the substance of any conclusions or observations, and no joint authorship was to be inferred. He added, in reply to a question by Mr. ABOUL-NASR, that such encouragement involved no financial or logistic support. He reiterated that, while the Secretariat accepted such studies and compilations from academic and other sources, they remained entirely the responsibility of the respective authors.

25. The CHAIRMAN said that, while he felt sure that the Office of the High Commissioner took no responsibility for the substance of such studies, there was a risk that the circulation of the report to some 180 States would have given an impression of collaboration or endorsement by the Office. The latter should be urged, therefore, especially in view of the charge that the Committee had shown political bias, to issue a disclaimer for the widest possible circulation.

26. Mr. THORNBERRY agreed on the need for a clear response by the Committee on such a serious matter. Perhaps a more positive way to respond would be to take it up in the context of a substantive agenda item which could deal, for example, with the Committee's methods of work, with a view to issuing a statement on behalf of the Committee. He had already drafted some possible observations in that regard, which he was prepared to table for consideration if the Committee so wished.

27. The CHAIRMAN said that Mr. van Boven, a former member of the Committee, had written to say, in connection with Professor Bayefsky's concerns about the Committee, that, while he could understand why her comments had been welcomed by the Australian Government, he strongly questioned the contention that the Committee had the "least developed concluding observations", and that it would be regrettable if certain political forces were able to make use of the report's contents to belittle what the Committee had already achieved. It was comforting to receive such a statement from a person whose eminence, experience and independence placed him at least on a par with the author of the report.

28. Mr. BOSSUYT, referring to Japan's comments on the Committee's concluding observations, said that, although there was a necessary link between those two stages in the Committee's proceedings, a way must be found to make it clear that a State party's response should not be longer than the concluding observations themselves.

29. The CHAIRMAN, noting an observation by Mr. THORNBERRY that the Committee was not the only treaty body to have encountered that difficulty, and recalling an earlier proposal by Mr. Aboul-Nasr, suggested that the secretariat might request the Permanent Mission of Japan to produce a summary, perhaps of no more than three pages, of its comments, with a view to reporting them together with the Committee's concluding observations pursuant to article 9, paragraph 2 of the Convention.

30. Mr. TANG Chengyuan, referring to the report by Professor Bayefsky, said that, because of the wide differences in country situations, the complexity of issues and the virtual impossibility for Committee members to have first-hand experience of all the country situations brought to their attention, it would be unrealistic to assert, or expect, complete objectivity in its respective findings. Even a judge of the International Court of Justice, replying to questions on that subject, had said that all the Court could do was to abide by its rules, which might not necessarily be viewed as adopting an unbiased response to every national situation. He had not read Professor Bayefsky's report but did not see why the Committee should trouble itself unduly therewith; it should, however, respond to the Australian authorities' observations, some of which had been overstated, but that should be done in the form of dialogue, in the context of continuous efforts to improve the Committee's methods of work. Its task was, of course, to urge countries to observe the Convention's provisions and, if it felt there were shortcomings in that regard, to encourage them to effect improvements. Since there were almost always bound to be inconsistencies in the Committee's concluding observations on differing situations, perhaps the observations should be prepared in separate stages, with an initial version, to which the State party could provide a draft response, to be followed, after further discussion with the State party, by final concluding observations. Then the State party, if it so wished, could issue an official response, for which a maximum length, say three pages, could be set.

31. Mr. PILLAI, referring to the response from Japan, agreed that it was important to set some guidelines as to length, and States parties should limit themselves to matters raised in the Committee's conclusions and recommendations. Turning to the Bayefsky report, he expressed some concern about its timing and wide distribution. While serious efforts to address shortcomings in the treaty body system were welcome, he would expect the Office of the High Commissioner to play a leading role in any such efforts. The study in question, by a university researcher, contained unfounded allegations which might serve to undermine trust in the United Nations human rights treaty system. Those criticisms must be answered, in part by recalling the difficulty of creating a uniform human rights framework throughout the world. The Bayefsky report and greater criticism on the part of Governments were symptomatic of a trend towards increased public scrutiny of human rights bodies and it was important that dialogue with the members of those bodies be encouraged in order to ensure a fair and even-handed approach. The Committee should contact other treaty bodies mentioned in the report in order to produce a collective response on common issues as well as more individual responses on issues specific to certain committees.

32. The CHAIRMAN specified that he had never been approached in his official or personal capacity by Ms. Bayefsky during the preparation of her report.

33. Mr. de GOUTTES agreed with Mr. Bossuyt's comment about the length of responses from States parties. With regard to the Bayefsky report, he noted that the media release prepared by Australia had only quoted criticisms of the Committee, which was perhaps not surprising given the Committee's own criticisms of the State party. However, the allegations of poor knowledge of the countries in question, excessive influence of external sources and political bias were more serious and could cast doubt on the Committee's impartiality. It was of course incumbent upon the Committee to reflect on constructive criticisms but he observed that absolute objectivity was perhaps impossible, given that Committee members reflected the diversity of the international community, which he believed to be very positive. Each member had a duty to try to remain objective, to consult all available sources of information, for example from Governments and non-governmental organizations, and to treat all countries equally, while maintaining independence of action. The criticisms highlighted in the media release from Australia, and widely distributed, had been unacceptably strong and could lead to a crisis of confidence in the Committee. It was therefore essential that the Committee inquire about the extent of the Office of the High Commissioner's collaboration with the author of the study, draft a response to the media release which would also be widely distributed and respond in writing to Ms. Bayefsky.

34. Mr. SHAHI agreed with the recommendations on guidelines for responses by States parties to the conclusions and recommendations of the Committee. As to the Bayefsky report, the Office of the High Commissioner should make it clear that the author's conclusions were her own and did not in any way imply support from that Office. In addition, although he recognized the difficulty in reconciling the points of view of experts from very diverse backgrounds, and the need to reflect on any justified criticisms, he felt it necessary for the Committee to reply most strongly to accusations of political bias.

35. Mr. YUTZIS recalled that there had been many studies of the workings of the human rights treaty body system but there was a trend towards a more critical approach on the part of the authors of those studies, which he believed to be a positive development. However, it set a dangerous precedent for States parties to use criticisms such as those contained in the Bayefsky report as part of what could be described as a campaign to place limits on the work not only of the Committee on the Elimination of Racial Discrimination but also of all other treaty bodies. He agreed that a working group should be set up with a view to preparing an appropriate response to the report and the media release from Australia and, in the latter regard, suggested that it be recalled publicly that the State party had refused to authorize a visit by members of the Committee. As to limits on the length of States parties' responses to the conclusions and recommendations of the Committee, he agreed with the suggestion made by Mr. Bossuyt.

36. Mr. VALENCIA RODRIGUEZ agreed with suggestions made regarding the comments of States parties on the Committee's concluding observations. With regard to the Bayefsky report, he stressed that such studies were undertaken solely with a view to improving the efficiency of the treaty body system but any conclusions reached by the authors did not in any

way imply support on the part of the Organization. It was, however, important for the Committee to state categorically that the author's allegations were incorrect and reaffirm that members made every effort to remain independent and impartial.

37. Mr. DIACONU said that the diverse backgrounds of Committee members was certainly a greater guarantee of objectivity than if members represented only one country, region or political system. Although the Committee had criticized Australia for its treatment of its Aboriginal population, he did not believe the Committee had been politically motivated; it was simply its duty to remind States parties of their obligation to implement the Convention fully. Of course the Committee must seek ways to improve its working methods but it must not lose sight of its primary objective, which was implementation of the Convention. Accordingly, it was important that the Committee publish and widely distribute a statement to respond to the Bayefsky report and the media release from Australia, and the Office of the United Nations High Commissioner for Human Rights should also publicly distance itself from the conclusions contained in that report. Such actions were especially important in order to reflect accurately the role of the Committee in working towards the goal of eliminating racial discrimination, particularly in the context of preparations for the upcoming World Conference.

38. Mr. FALL said that he agreed particularly with the suggestions regarding the position to be conveyed to the High Commissioner at the next day's meeting, the setting up of a working group and the issuance of a formal Committee statement rejecting the unfounded criticism.

39. Mr. BOSSUYT drew attention to the draft report of the persons chairing the human rights treaty bodies at their thirteenth meeting (para. 17), where the High Commissioner was quoted as saying that her Office encouraged independent reflection on the functioning of the treaty bodies but that any conclusions reached were those of the authors alone. That was an unavailable statement, and the Committee should refer to her true position and to the positions taken by former Committee members Mr. Wolfrum, Mr. Banton and Mr. van Boven when drafting its own statement. The accusation by Professor Bayefsky, echoed by Australia, that the Committee was the most political of the treaty bodies was particularly unfounded. In general, the author of the report had had no personal experience of the workings of the treaty bodies and was writing only as an outside observer. Furthermore, she underestimated the differences between the treaties themselves that precluded a standardized approach. That said, it should not be automatically assumed that even an outside academic could not offer some helpful suggestions.

40. The CHAIRMAN noted that another renowned academic, Philip Alston, the three-time Chairperson of the Committee on Economic, Social and Cultural Rights and the Chairperson of the meetings of chairpersons had, when assessing the Bayefsky report ("Beyond 'Them' and 'Us': Putting Treaty Body Reform into Perspective", in The Future of UN Human Rights Treaty Monitoring, p. 503), contended that her criticism of the treaty system, stemming apparently from a greatly oversimplified contrast between the liberal democratic States and those with no democratic aspirations, was based on highly unrepresentative examples which did not provide an accurate or balanced picture, and that her diagnosis rested on a fundamental misunderstanding of the nature and objectives of the system.

41. Mr. ABOUL-NASR said that, while Ms. Bayefsky had a right to hold and express her opinions, States parties should not be led to believe that the Secretary-General or the High Commissioner supported them. Many would read the Bayefsky report, and equal publicity should be given to the fact that the High Commissioner had not endorsed it. A working group should draft the Committee's statement on the matter and, in the meantime, the High Commissioner should be asked to make it clear that she distanced herself from both the report and the misleading Australian press release.

42. He had misgivings about imposing a three-page limit on State party responses to the Committee's concluding observations, which often ran to three pages themselves, but in the case of Japan's exceptionally lengthy response, the State party could be asked to supply a summary.

43. Mr. RESHETOV said that the Bayefsky report had been prepared on the basis of no more than 30 or 40 countries, which, like the author's sources, had not even been specifically listed. He would be very concerned if a document so full of shortcomings was presented to the world and to coming generations as a United Nations document.

44. Mr. LECHUGA HEVIA agreed that States parties could not be denied the right to reply to the Committee as they wished. Regarding the Bayefsky report, the Committee had to respond to it energetically but without engaging in a polemic with the author. The Office of the High Commissioner must issue a clarification about its supposed collaboration with the author, and the Committee in its own statement should report what the High Commissioner had actually said, as cited in the report of the meeting of chairpersons.

45. The CHAIRMAN observed that the problem was not one of including States parties' comments, which was provided for in article 9, paragraph 2, of the Convention, but that of the length of the Japanese reply. The secretariat should therefore contact the Permanent Mission of Japan to explain that 18 pages were too many and ask it to provide a summary for inclusion in the Committee's annual report. He suggested that Mr. Bossuyt should draft a position of principle on limiting the length of State party responses in general, for further discussion.

46. As a number of Committee members had pointed out, the issue was not to enter into a dialogue with Professor Bayefsky, whose report could in fact be taken as an effort to put pressure on the experts of the Committee, whereas it was essential that they should remain independent, as indicated in the Committee's General Recommendation IX. The issue was to defend the Committee, and its response should be drafted by a working group. He suggested that Mr. Thornberry should be the convenor, assisted by Mr. Yutzis, Mr. Shahi, Mr. Fall, Mr. Diaconu and Mr. Reshetov.

47. It was so decided.

48. Mr. THORNBERRY recalled his earlier suggestion that the Committee should review its working methods on a fairly regular basis, noting that some points raised in the Bayefsky report concerning for instance the nature, content and operation of concluding observations could usefully be discussed, perhaps at a future session.

49. Mr. YUTZIS, recalling that the meetings of the Preparatory Committee for the World Conference against Racism were being held concomitantly and would be dealing with crucial points, some of them very controversial, said that Ms. January-Bardill, currently replacing Ms. McDougall as the convener of the contact group, should be asked to keep the Committee regularly informed as the discussions there progressed, so that the Committee could take positions accordingly.

50. The CHAIRMAN said that the Conference preparations would indeed receive top priority.

The meeting rose at 1.05 p.m.